BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of San Diego Gas & Electric Company (U 902 G) and Southern California Gas Company (U 904 G) for Authority to Integrate Their Gas Transmission Rates, Establish Firm Access Rights, and Provide Off-System Gas Transportation Services.	Application 04-12-004 (Filed December 2, 2004)

OPENING BRIEF
OF THE DIVISION OF RATEPAYER ADVOCATES'
ON PHASE 2 ISSUES

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I. INTRODUCTION AND SUMMARY OF RECOMMENDATIONS

Pursuant to Rule 75 of the Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) submits this Opening Brief on the request of San Diego Gas and Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) to establish a system of Firm Access Rights (FAR) and off-system deliveries and to maintain the peaking rate of SoCalGas. DRA recommends that the Commission:

- deny the request to establish a system of bundled FAR at this time, because SoCalGas and SDG&E have not shown that the benefit of their proposed system of FAR outweigh the burden;
- deny the request of Watson Cogeneration Company and others to establish a modified system of FAR because they have not shown that benefits of their revised system of FAR outweigh the burden;
- If the Commission believes a system of FAR is necessary, it should instead adopt DRA's proposal to directly allocate rights to customers based on the current allocation of customers' share of intrastate transportation costs as adopted

in the last BCAP.[1] DRA's proposal would be easier to implement than either of the other FAR proposals, and would avoid the legal pitfalls identified in Public Utilities Commission v. Federal Energy Regulatory Commission, 143 F. 3d 610 (1998), in which the Court directed FERC to order SoCalGas to refund the system access charge it had impermissibly charged interstate shippers.

- The first 400 MMcf/d of displacement capacity at Otay Mesa should be allocated to ratepayers. The Commission should consider, on a case by case basis, ratemaking treatment of other facilities needed to deliver liquefied natural gas (LNG) at Otay Mesa, thereby rendering the Joint Proposal of other parties unnecessary;
- Allow off system deliveries to PG&E, but require SoCalGas/SDG&E to present more evidence about the need for new facilities for firm off-system delivery services.
- Continue the peaking rate of SoCalGas in its present form but evaluate the rate in the next BCAP.

II. BACKGROUND

There is widespread support for diversifying California's supply options for natural gas, including introduction of LNG.[2] The Commission, in Phase I of this proceeding, approved the economic rate integration of the gas transmission systems of SoCalGas and SDG&E in order to facilitate that goal.[3]

Shortly after the April 13, 2006 issuance of the Commission's Phase I decision, the assigned Commissioner and Administrative Law Judge directed parties to submit

[1] 10 Reporter's Transcript (RT) 154818:22, DRA/Sabino.

[2] Energy Action Plan II, p. 13 ("California must also promote infrastructure enhancements, such as additional pipeline and storage capacity, and diversify supply sources to include liquefied natural gas (LNG)."). The Commission is considering policies and rules needed to ensure reliable, long-term supplies of natural gas to California in Rulemaking (R.) 04-01-025.

[3] Decision (D.) 06-04-033. SoCalGas/SDG&E filed the current application in response to Decision (D.) (D.) 04-09-022. SDG&E and SoCalGas advocated in Phase I of R.04-01-025 integrating their transmission system integration and adopting system of firm access rights

testimony on Phase II issues including whether "the firm access rights proposal of SDG&E and SoCalGas be adopted, or should the existing 'windowing' system of gas nominations and transmission be retained, or should alternative transmission access proposals be considered?" and related issues, as well as whether to allow off-system deliveries and whether to maintain the peaking rate of SoCalGas.[4]

The Commission heard nearly two and one half weeks of testimony on these issues, largely directed to the FAR proposal of SoCalGas and SDG&E, as well as a modified system of FAR proposed by Thomas Beach and sponsored by a coalition consisting of Watson Cogeneration, Indicated Producers, California Cogeneration Council, California Manufacturers and Technology Association ("Beach proposal"). Testimony at the hearings reflected wide spread disagreement on whether either the SoCalGas/SDG&E FAR proposal or Beach proposal were necessary to promote the goal of "ensuring that California has a reliable supply of reasonably priced natural gas."[5] More fundamentally, there was no agreement as to whether the current SoCalGas/SDG&E gas transportation system needs any modification at the current time.

III. DISCUSSION

A. The Commission should reject the SoCalGas and SDG&E FAR proposal because it is unnecessary and burdensome.

1. SoCalGas/SDG&E FAR proposal

SoCalGas and SDG&E explain that under the existing system, upstream suppliers can schedule more gas than SoCalGas can physically redeliver. Consequently, if SoCalGas receives more nominations than a particular receipt point can accommodate, it must allocate receipt point capacity among upstream pipelines. The result is that it is the

[4] April 17, 2006, Amended Scoping Memo.

[5] D.04-09-022, *mimeo*, pp. 42-43.

upstream pipelines' scheduling rules that determine whose gas flows and whose nominations get cut.[6]

SoCalGas/ SDG&E's proposed solution to the mismatch in upstream pipeline capacity and its own system is a system of Firm Access Rights that would charge shippers at SoCalGas receipt points 5 cents per decatherm (dth) for firm access into the SoCalGas/SDG&E gas transportation system.[7] Interruptible access would cost a maximum of 5 cents per dth. Shippers could be either marketers or end use customers, but only customers can transport gas on the SoCalGas/SDG&E system. SoCalGas and SDG&E propose recovering Company Use fuel for transmission through an in-kind fuel factor of 0.28 percent, which would automatically be taken at the receipt point. End-use customer transportation rates would be reduced by the FAR revenues received and by removing Company Use fuel from transmission rates. SoCalGas/SDG&E's FAR proposal assumes System Integration treatment of transmission costs, and would credit FAR revenues through the Integrated Transmission Balancing Account (ITBA).

SoCalGas/SDG&E proposed allocating firm access rights for their existing eleven receipt points, in three different zones, as follows. The three-step process would recognize in the first step set asides for some customers, including the core, who have existing long term interstate contracts that are at risk for becoming stranded in the absence of matching intrastate rights. The second step would allow existing noncore customers to acquire up to 75 percent of capacity at a receipt point, while the third step would allow entities that are not customers to acquire the remaining capacity. Customers could acquire rights with three year terms in the first two steps, while the third step would require contracts with terms of 15 years. Customers could acquire alternate firm rights in

[6] Ex. 12, p.3, SoCalGas/SDG&E/Watson.

[7] Ex. 37, pp. 4-5, SoCalGas/SDG&E/Smith

the same zone as their primary receipt point, and possibly alternate rights in a different zone.[8]

2. FAR would decrease flexibility to purchase the lowest cost gas.

SoCalGas currently offers significant flexibility for customers purchasing gas. End-use customers, who pay all of SoCalGas' and SDG&E's transportation costs, can purchase gas at any of SoCalGas' eleven receipt points in three different zones at no additional cost beyond their share of the volumetric transportation costs of SoCalGas. SoCalGas customers are currently free to shop around among various supplies, during four daily bidding cycles, for the lowest price. [9] Customers can nominate gas deliveries at various receipt points without making advance arrangements for capacity, with the result that they can quickly respond to changes in gas prices at different receipt points.[10]

This would change under FAR. Customers seeking the same degree of flexibility would be required to purchase firm access rights for receipt points in different zones. Alternatively, customers could limit their purchases to those suppliers who purchased FARs. In either case, the cost of firm access rights would create a barrier between buyers and sellers that does not exist today.

FAR would limit the choices of both buyers and sellers by narrowing the pool of buyers and sellers. Shippers at a receipt point would be limited to selling to those customers that had purchased firm access rights (or in some cases, alternate firm access rights) for that point. Customers who elected not to purchase firm access rights would be limited to purchasing at the city gate from those shippers who purchased firm access rights. The current flexible system, which does not require customers to purchase firm access rights based on their prediction of what gas prices and availability will be in the

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[8] Ex.16, p. 32:9-13, SoCalGas/SDG&E/Schwecke.

[9] 14 RT 2211:7-17, PG&E/Graham.

[10] Ex. 92, p. 5:13-18, SCGC/Yap.

future,[11] better serves both buyers and sellers by allowing customers to "take advantage of low prices without being constrained by receipt point holdings" and providing sellers with a potential market that includes all customers, not just those with firm access rights.[12]

3. FAR would decrease gas on gas competition and could result in increased costs for customers.

A corollary of decreased flexibility for buyers and sellers is the likelihood of increased gas costs for customers. The ability of customers under the current system to chase the lowest price results in significant "gas-on-gas" competition with suppliers competing to offer the lowest price. If suppliers hold firm access rights, they have the ability to limit competition, as acknowledged by Southern California Edison (SCE) witness Dr. Alexander:

> "[n]either the Firm Access Rights Proposal, nor the Joint Proposal….deals with the fact that …where you have []a supplier bringing in gas capable of displacing other gas, there is no guarantee that the lowest price gas will flow…."[13] If a supplier has the right to bring in gas, "that supplier can bring in gas whether or not it is the lowest-price gas and drive out lower priced gas."[14]

Currently, numerous transactions occur daily at receipt points throughout the SoCalGas system, resulting in a border market for gas that is "robust and liquid." [15] This single "robust and liquid" market results from the ability to move freely between receipt points. Under FAR, the market would be fragmented into at least two (border and

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[11] 9 RT 1297:5-10, 1301:11-1302:20, Watson et al./Beach (discussing possible future scenarios that would impact the dynamics of gas basins, and observing that "basin dynamics change all the time").

[12] Ex. 92, p. 7, 5-9, SCGC/Yap.

[13] 15 RT 2318:17-23, SCE/Alexander.

[14] 15 RT 2318:16-17, SCE/Alexander.

[15] 15 RT 2341:23-25, SCE/Alexander.

city gate) and possibly more segments, posing the risk of less liquidity, less robustness, and therefore higher prices.

4. The FAR would not unbundle transportation costs or place the utilities at risk and therefore offers little potential benefit to ratepayers, despite the "credit back" mechanism.

FAR does not unbundle intrastate transportation rates and therefore presents little if any potential upside for customers. As discussed in Section III A 5 *supra*, this is true despite the purported "savings" that would result from the credit back to end users of the 5 cents per dth reservation fee. The unbundling of services and placing SoCalGas/SDG&E at risk for cost recovery would promote more cost certainty for the unbundled cost components for ratepayers, and operate as an incentive for the utilities to efficiently operate and manage their system. This is precisely what happened with the PG&E Gas Accord, which unbundled costs and placed PG&E shareholders at risk for the recovery of the embedded cost of its backbone transmission system from backbone transmission service contract revenues. Similarly, the Comprehensive Settlement Agreement (CSA)[16] for SoCalGas included rates that were unbundled, at-risk, and based on the cost of backbone services.

In contrast, the current SoCalGas/SDG&E FAR rights proposal would retain bundled costs, using a non-cost based reservation charge of 5 cents per decatherm (Dth) that is ultimately credited back to end-users (i.e., both purchasers and non-purchasers of FAR rights). Without unbundling in the current FAR proposal, SoCalGas and SDG&E would assume no risk for recovery of its backbone transmission costs and ratepayers would not benefit from the increased cost efficiency that could result from incenting the utilities to maximize use of their system.

The reasons cited by SoCalGas and SDG&E for not unbundling costs and placing shareholders at risk, as parties agreed in the PG&E Gas Accord and CSA are not

[16] The CSA was filed in April 2000 and adopted by the Commission in D.01-12-018. It was put on hold by the Commission in D.04-04-015 pending the Gas OIR Phase I decision (R.04-01-025).

persuasive. SoCalGas and SDG&E claim that it would be highly contentious to unbundled costs.[17] If the Commission decides as a matter of policy to implement an unbundled transmission system on the SoCalGas/SDG&E systems, then SoCalGas/SDG&E would need to segregate their intrastate transmission costs into backbone and local transmission. According to the utilities, "If SoCalGas and SDG&E were ordered by the Commission to make such a separation, SoCalGas and SDG&E would need to evaluate the nature of every pipeline in their system under a variety of supply and demand conditions to determine which pipelines consistently provide backbone or local transmission functions."[18] There is no evidence that it is beyond the utilities' capability to segregate the transmission costs, and in fact SoCalGas indicated that it could accomplish the task in about two month.[19]

SoCalGas and SDG&E also claim that placing them at risk would be at odds with California's goals of reducing greenhouse gas (GHG) emissions and improving energy efficiency. They offered no evidence that PG&E, which must also meet energy efficiency goals and reduce GHG emissions, has been unable to achieve these goals within the structure of the Gas Accord. In fact, SoCalGas witness Mr. Morrow admitted that maximizing gas through put and achieving energy efficiency and GHG reduction goals could completely consistent.[20] Nor have SoCalGas and SDG&E explained why it would contravene energy efficiency and GHG reduction controls to place them at risk for backbone transmission revenues, while at the same time requesting a 90/10

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[17] Ex. 13, p. 12, SoCalGas/SDG&E/Watson.

[18] Ex. 50, p. 9, DRA/Sabino, citing SoCalGas response to Indicated Producers DR#1 Question 8-J.

[19] Ex. 50, p. 9, DRA/Sabino, citing SoCalGas Response DRA PZS5-8.

[20] 5 RT 579:15-18, SoCalGas/SDG&E/Morrow; see also Ex. 93, p. 2:26-3:1, SCGC/Yap ("Increasing the abundance of affordable gas supplies to California reduces the economic pressure to turn to the use of more carbon intensive fuels.").

ratepayer/shareholder incentive/sharing mechanism for interruptible transportation revenues.[21]

In any case, given that the utilities assume no shareholder risk under the FAR proposal, it is unreasonable to provide the opportunity for any incremental financial benefit or any reward for ensuring that the maximum amount of interruptible capacity is offered rather than profitably withheld from the secondary market.[22]

5. The "savings" to end use customers from the credit back mechanism are illusory.

SoCalGas and SDG&E propose that the five cents per dth reservation charge, which is not cost based,[23] be credited back to end users. In theory, this is only reasonable since these same end users are the ones who pay all of SoCalGas and SDG&E's transportation costs both today and under the FAR proposal. Shippers would pay for access under the FAR proposal, but would bear no cost responsibility for gas transportation under the current rate structure. Crediting back the access charge to shippers, as suggested by some shippers, would mean they obtained access for free, and would therefore provide no disincentive against hoarding access rights, a problem created by the FAR proposal that does not exist today.[24] Nevertheless, despite the enticement of decreased transportation costs, the FAR proposal is unlikely to result in real savings for ratepayers.

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[21] Ex. 12, p. 16:9 and fn. 22; SoCalGas/SDG&E (Interruptible access revenues would first be used to offset any undercollection in the Integrated Transmission Balancing Account. If there is no undercollection, then the interruptible revenues would be shared 90/10, with a $5 million cap.).

[22] Ex. 50, p. , DRA/Sabino, citing SoCalGas Response DRA PZS2-7.

[23] Ex. 50, p. 12, DRA/Sabino, citing Response to Exxon-Mobil DR#1 Question 9.

[24] 15 RT 2328:23-2329:6, SCE/Alexander (the current system does not allow the possibility of exercising market power at a receipt point by holding capacity and not exercising it); 15 RT 2341:19-21, SCE/Alexander (in the absence of firm access rights, hoarding would not be an issue); Ex. 43, p.ii, paragraph 7, Watson et al./Beach (discussing the "minimum" charge needed to discourage hoarding of firm access rights.)

Customers who elect to purchase firm access rights would be required to pay the $0.05 premium for the right to access gas that they are already entitled to receive by virtue of their bundled rate. Customers who elect not to purchase firm access rights and purchase at the city gate will likely pay a price that includes the 5 cents per dth charge paid by shippers.[25] End use customers would receive an allocation of the 5 cents per dth credit regardless of whether they purchased firm access rights, which means there will be a mismatch between paying the charge and receiving the credit.[26]

There is no guarantee that ratepayers will in fact see any reduction in their rates as a result of the FAR proposal; instead, the very real possibility exists that their rates will increase as a result of the proposed additional charge that bears no relation to actual costs.

6. FAR would not significantly increase certainty.

One of the main purported benefits of the FAR proposal is that it will increase customers' certainty that their supplies will be delivered. Despite that claim of uncertainty, and despite occasional constraints at the popular receipt points of Wheeler Ridge and in the North Desert Transmission Zone, the current system functions remarkably well. SoCalGas has implemented allocation methodologies that address those constraints[27] with the result that in the past year SoCalGas has made only one cut in the North Desert Transmission Zone, and there were only six or seven days in 2005 that the Wheeler Ridge Zone was operated at capacity.[28] Even on July 24, 2006, a recent

[25] 15 RT 2337:26-28, SCE/Alexander (Suppliers could "extract that [cost of FAR] in the price they charged for the commodity that they supply.").

[26] 8 RT 1251:22-24, SoCalGas/SDG&E/ Smith.

[27] Ex. 92, p.16:12-17:3, SCGC/Yap.

[28] Ex.93, p. 10, SCGC/Yap; 14 RT 2202:25-2203:4, PG&E/Graham.

day with record high heat and electric use, SoCalGas did not need to prorate supplies.[29] There is no evidence that this trend will change.[30]

Nor does it appear that the current system prevents parties from entering into long term supply contracts, given the number of requests for "set aside" capacity in recognition of existing contracts.[31] Moreover, if FAR is implemented, it may increase certainty for the "winners" of receipt point capacity, at a cost, but for "losers" in the bid for FAR, it will simply force them to a less desirable receipt point or to the interruptible market. FAR does not increase capacity, it is just another allocation methodology.[32] The real limitation of the SoCalGas system is customer demand.[33]

7. FAR would introduce unjustified complexity.

SoCalGas currently has a four-step nomination cycle that begins the day before gas is expected to flow. The FAR proposal would not change that.[34] Instead it would layer on the existing nomination cycle an open season consisting of three and possibly four steps.[35] The proposal of SoCalGas and SDG&E to allow set asides for existing core and other contract rights in the first step of the open season has been challenged by so many parties who would also like set asides that sorting out this issue alone will likely involve significant resources and development of potentially contentious guidelines.[36] The second step of the open season would consist of three rounds of bidding, the results

[29] Ex. 93, p.3:7-9, SCGC/Yap.

[30] Ex. 32, SoCalGas Data request response to DRA-PZS1 and 8 RT 1151-1555.

[31] PG&E customers, among others, have existing long-term contracts that were executed under the existing system, which are now the subject of requests for set asides. 14 RT 2143:6-2144:7, 2147:23-25, PG&E/Graham (six PG&E contracts with 30 year terms); Ex. 95, p. PG&E/Graham.

[32] 11 RT 1663:14-15, Coral/Dyer.

[33] 12 RT 1875:14-16, Coral/Travis.

[34] 15 RT 2372:17-23, SCE/Alexander.

[35] 15 RT 2369:16-21, SCE/Alexander.

[36] Among the parties requesting set asides are PG&E, Exxon, Occidental, and SCGC.

of which would be prorated if necessary to remain within SoCalGas and SDG&E's proposal to allocate no more than 75 percent of receipt point capacity in step two of the open season. Firm access rights acquired in the first two steps would produce three year commitments. The third step of the open season would result in 15-year commitments under the SoCalGas and SDG&E proposal, but the length of the required commitment has been challenged as too long.[37]

Shippers and/or customers who are unable to acquire their desired level of firm access rights in the open season would have the option of acquiring more in the secondary market. SCE has requested price caps and a reporting requirement for any entity holds more than 30 percent of the capacity at a receipt point. SCE proposes that the Commission review those reports to ensure there is "economic justification" for holding more than 30 percent of the capacity at a receipt point.

Adopting the FAR proposal and addressing concerns raised by parties to this proceeding about its potential impact raise significant issues of complexity that do not exist under the current system. This complexity is another reason why the Commission should not adopt FAR, especially given the speculative nature of any purported benefits.

8. FAR is unnecessary to allow new supplies on the system.

There is no need to adopt SoCalGas and SDG&E's FAR proposal in order to accommodate new supplies on the system. Rule 39 provides for equal access to SoCalGas/SDG&E's system.[38] Rule 39 provides for an interconnect agreement between SoCalGas and an upstream supplier, for a collectible system upgrade agreement with new suppliers, and for payment of expanded receipt point by new suppliers.[39] Additionally, SoCalGas and SDG&E can file an application to request capacity expansions on their

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[37] 15 RT 2370:10-11, SCE/Alexander. SCE requests a three-year term for firm access rights acquired in step 3.

[38] 9 RT 1299-1300, Watson et al./Beach (Rule 39 provides equal access for new supplies.).

[39] 15 RT 2317:6-16, SCE/Alexander.

system. The need, cost basis, and ratemaking treatment associated with such expansions can be addressed through processing such applications on a case-by-case basis. In short, Rule 39 and existing procedures allow suppliers to access the SoCalGas/SDG&E system without the need to implement FAR.

B. The Commission should reject the SoCalGas and SDG&E FAR proposal because it suffers from the same flaws as an earlier access charge that FERC determined was impermissible.

SoCalGas and SDG&E's FAR proposal is not the first time SoCalGas implemented an access charge for use of its system. The current proposal is similar to an earlier SoCalGas tariff that FERC determined was "improperly levied …in violation of section 1(c) of the [Natural Gas Act]…."[40]

SoCalGas submitted Rate Schedule G-ITC to the CPUC in 1993, proposing an interconnection charge to be collected from interstate shippers delivering gas to SoCalGas at its Wheeler Ridge facilities.[41] Rate Schedule G-ITC applied to "natural gas transportation deliveries nominated by shippers into [SoCalGas's] Intrastate system at the Wheeler Ridge and Kern River Station points of receipt ("interconnects") with the interstate systems of Kern River Gas Transmission Company, Mojave Pipeline Company and the Pacific Gas and Electric Company Expansion Project."[42]

Rate Schedule G-ITC provided that shippers would "be billed a firm access reservation charge each month….as set forth in the Access Agreement."[43] The CPUC approved Rate Schedule G-ITC and it went into effect July 13, 1993.[44]

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[40] Union Pacific Fuels, Inc. et al. v. Southern California Gas Company, Shell Western E&P Inc. v. Southern California Gas Company, Southern California Utility Power Pool and Imperial Irrigation District v. Southern California Gas Company, 77 F.E.R.C. P61,283, 1996 FERC 2314, *5.

[41] Union Pacific Fuels, Inc. et al. v. Southern California Gas Company, Shell Western E&P Inc. v. Southern California Gas Company, Southern California Utility Power Pool and Imperial Irrigation District v. Southern California Gas Company, 76 F.E.R.C. P61,300; 1996 FERC LEXIS 1705, *4 (1996).

[42] Union Pacific Fuels, Inc. et al. v. Southern California Gas Company,1996 FERC 1705, *6.

[43] Id.

Several of the interstate shippers protested Rate Schedule G-ITC at FERC, claiming that it was "an illegal and discriminatory access fee" and requesting that FERC order SoCalGas to refund the charges paid by interstate shippers to access its system. Parties also requested rehearing of Resolution G-3072, the advice letter that approved Rate Schedule G-ITC. The CPUC annulled the tariff permitting interconnection, and ordered SoCalGas to refund all interconnection charges, and to file a new tariff to assess the charge on intrastate shippers only.[45]

The CPUC subsequently remanded the case to hearing, and on the facts presented, reversed its prior decision that SoCalGas must refund the money it charged the interstate shippers as an access charge.[46] The CPUC reasoned that the interstate shippers, by nominating gas on the SoCalGas system, became customers of SoCalGas.[47] FERC rejected this conclusion and instead held that because the access charge was intended to "collect the costs of intrastate facilities from interstate shippers who do not transport gas over those facilities,"[48] and the CPUC's approval of the tariff infringed on FERC's exclusive jurisdiction over interstate transportation of gas.

The District of Columbia Court of Appeals ultimately considered both the legality of the access charge and issues related to refunds and concluded:

> "FERC reasonably found that the tariff was an access charge for interstate petitioners and properly found it illegal."[49]

(continued from previous page)
[44] Id.

[45] Id., **7-8.

[46] Id., *8-9.

[47] Id., *10.

[48] Union Pacific Fuels, Inc. et al. v. Southern California Gas Company, Shell Western E&P Inc. v. Southern California Gas Company, Southern California Utility Power Pool and Imperial Irrigation District v. Southern California Gas Company, 77 F.E.R.C. P61,283, 1996 FERC 2314, **21. (emphasis added).

[49] Public Utilities Commission v. Federal Energy Regulatory Commission, 143 F. 3d 610, 618 (1998)

The current FAR proposal suffers from similar defects. SoCalGas and SDG&E propose collecting access charges, including both the 5 cents per dth firm access charge and the Company Use fuel for transmission,[50] regardless of whether the firm access rights holder is an end use customer or a shipper. End use customers still pay for intrastate transportation costs in their bundled rates on the SoCalGas/SDG&E system, [51] and interstate shippers would not actually be shipping gas over the intrastate facilities of SoCalGas and SDG&E. As SCE witness Dr. Alexander observed:

> "firm *access* rights are different than firm *transmission* rights" (which the Commission has determined are not the subject of this proceeding). Firm access rights fall short of firm transmission rights because access rights will permit the holder to bring gas on to the SoCalGas/SDG&E system but will <u>not</u> guarantee that the gas will be delivered to the customers' burner tips. Actual delivery will depend upon the gas transmission contract the customer has with SoCalGas and/or SDG&E.[52]

Under the FAR proposal, if a shipper on the Kern River pipeline obtains firm access rights, the shipper would pay an access charge as well as for in kind fuel for SoCalGas compressors, even though the shipper is not a transportation customer of SoCalGas.[53] These charges appear to be the precisely the type that FERC found impermissibly violated its exclusive jurisdiction over interstate transportation of gas. The illegality of the proposed FAR charges is yet another reason for rejecting the proposal.

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[50] Ex. 15, p. 22, SoCalGas/SDG&E/Schwecke (SoCalGas is proposing to recover fuel in-kind from parties that have Receipt Point Access Contracts).

[51] 14 RT 2151:19-21, 2152:20-22,PG&E/Graham (No third party can move gas on the SoCalGas system, only customers.).

[52] Ex. 109, p. 4:5-13, SCE/Alexander (emphasis in original).

[53] Ex. 15, p. 22: 22-24, SoCalGas/SDG&E/Schwecke.

C. The Beach proposal contains flaws similar to those in the SoCalGas/SDG&E FAR proposal.

The Beach proposal would establish a system of firm access rights that appears to combine features of both the SoCalGas/SDG&E FAR proposal and the PG&E Gas Accord. Instead of charging 5 cents per dth for firm access rights, the Beach proposal would charge 15.7 cents per dth, a number derived from the system-wide integrated average transmission rate using the cost allocation and rate design that the Commission approved in D.06-04-033.[54] The Beach proposal purports to "unbundle" the transmission costs from SoCalGas/SDG&E's transportation rates and place SoCalGas/SDG&E at risk for recovering those costs through the FAR reservation charge and interruptible revenues.

While the Beach proposal has many of the same flaws as the SoCalGas/SDG&E FAR proposal, including reduced customer flexibility and the related risk of increasing the cost of gas, to the extent that it would place SoCalGas shareholders at risk, it represents an improvement over the SoCalGas/SDG&E FAR proposal. However, it would be inappropriate in this proceeding to undertake even partial unbundling as suggested by the Beach proposal. At a minimum, the Commission would need to direct SoCalGas to file another application for the purposes of considering unbundling.

Moreover, the Beach proposal also requires interstate shippers to pay for access to the SoCalGas system, a type of charge that FERC has rejected as discussed in III B *supra.* Although the Beach proposal purports to "unbundle" SoCalGas/SDG&E transmission costs, it does not create a backbone level transmission rate.[55] Mr. Beach explains that:

> "FARs and firm rights to transmission capacity are functionally the same on the SoCalGas/SDG&E system, because FARS are defined such that, if a shipper can move gas through a receipt point, the downstream takeaway

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[54] Ex. 43, p.30, Waston et al./Beach.

[55] Ex. 43, p. 28:15, Watson et. al./Beach ("I do not propose to create a backbone level transmission rate.")

> capacity is adequate to deliver the shippers gas to any delivery point in southern California."[56]

Although a shipper under the Beach proposal would purchase rights that are "functionally the same" as transmission capacity, the 15.7 cents per dth rate is not a backbone level transmission rate. Shippers therefore would purchase access to the SoCalGas/SDG&E system, but not actual transportation as they do under the PG&E Gas Accord. The Commission should therefore reject the Beach proposal as well.

D. DRA's Alternative FAR proposal reduces flexibility but is a better way of allocating capacity.

If the Commission wishes to establish a system of firm access rights based on bundled transmission costs, despite the loss of flexibility and associated risk of increasing prices through reduced gas-on-gas competition, then DRA recommends directly allocating firm access rights to end-use customers based on the current allocation of intrastate gas transmission costs in the last BCAP. Core customers should be allowed to match their current interstate rights if the allocation based on BCAP per cost responsibility would otherwise result in a mismatch at a given receipt point, in exchange for fewer rights at another receipt point. To simplify the allocation process, the allocation would exclude receipt points for the California gas supply transmission zone.[57] Thus, allocating firm rights based on cost responsibility produces fair results, since SoCalGas/SDG&E customers pay for transmission costs in their bundled existing rates and will continue to do so unless the Commission decides to unbundle costs as it did for the PG&E Gas Accord.

The SoCalGas transmission costs are allocated approximately 42% to core and 58% to non-core by DRA's estimate. Therefore, the firm access rights (excluding the

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[56] Ex. 43, p. 27:17-22, Watson et. al./Beach.

[57] The allocation method would exclude the Coastal system of 150 MMcf/d and the L85 system of 160 MMcf/d.

California gas transmission zone) would be allocated to customers according to this proportional share. DRA also recommends holding back a small reserved amount of firm access rights at Blythe of 100 MMcf/d to take care of any new noncore customer load that may be added.

DRA's direct allocation based on BCAP transmission cost allocation would operate as follows. The total amount of current receipt point capacity and zones on the SoCalGas/SDG&E system is 3,875 MMcf/d.[58] This amount would be reduced by the California transmission zone capacity of 310 MMcf/d and 100 MMcf/d of Blythe capacity for new customer load. The remaining receipt point capacity for allocation is 3,465 MMcf/d. Using a 42%/58% core to non-core split, the core would be allocated 1,455 MMcf/d and the non-core would be allocated 2,010 MMcf/d based on the respective share of the capacity payment included in their bundled rates.

The core would then be allocated sufficient receipt point capacity to match upstream commitments at the appropriate receipt points, with the difference allocated on a proportional basis at each point. Therefore, the 480 MMcf/d at Ehrenberg, 280 MMcf/d at Topock, 200 MMcf/d at North Needles and 50 MMcf/d at Wheeler Ridge would establish core minimums at each receipt point.[59] If a pro-rated allocation would result in less than the minimum at a receipt point, the core would receive its minimum in exchange for proportionately less at another receipt point.

Other methods could be used to determine the core allocation as long as the end result is matching firm upstream rights and access to its 1,455 MMcf/d. After the core allocation of capacity, the remaining capacity would be allocated to non-core customers generally on a prorated basis. The firm access rights to non-core customers of 2,010 MMcf/d could be allocated proportionally to individual customers based on their average demand over the last 3 years. The Commission could entertain some method to

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[58] See Ex. 12, Table 2, p.7, SoCalGas/SDG&E/Watson.

[59] These figures are consistent with SoCalGas' testimony.

accommodate non-core customers' firm upstream contract rights, but given the limited time DRA has not developed a specific method.

Customers would be able to trade and assign rights. The term for the allocation of the firm access rights could range from one to three years. The Commission could direct SoCalGas to establish an electronic bulletin board that would allow end-users to trade their rights. Furthermore, end-users would have the ability to directly assign their rights, for example, to a designated marketer or producer.

DRA's recommendation has the following key benefits:

- simplicity;
- it imposes no additional cost upon customers and does not increase the cost of delivered gas;
- additional costs to prevent hoarding or market manipulation are unnecessary, because customers, as opposed to marketers and shippers, do not benefit from increased gas costs;
- the value of the firm rights go directly to customers consistent with cost responsibility already reflected in bundled rates and without payment of arbitrary premiums;

DRA's recommendation would be relatively easy to implement: BCAP gas transmission allocation is readily available and the mechanism that updates the allocation is already in place. The Commission could revisit the direct allocation of firm access rights within the subsequent BCAP proceedings or simply continue to allocate rights under this approach for the 1-3 year period.

The DRA recommendation still reduces current flexibility as compared to the current system that allows buyers and sellers customers access to all receipt points, but if the Commission believes certainty in deliveries outweighs the advantages of flexibility, DRA's proposal would be a better means of achieving that goal than either the SoCalGas/SDG&E proposal or the Beach proposal. Nor would the alternate DRA FAR proposal raise issues of impermissible charges on interstate shippers, because there are no additional charges, in the event customers assign their rights directly to shippers.

E. The Commission should roll in the first 400 MMcf/d of Otay Mesa capacity, which would make the Joint Proposal unnecessary for that capacity.

DRA continues to support the Commission's policy in D.04-09-022, which adopted a policy that presumes LNG suppliers will pay the actual system infrastructure costs associated with their projects. The Commission explained that requests for rolled-in rates can be filed through the application process and evaluated on a case-by-case basis. If requests for rolled-in are taken on a case-by-case basis, as the adopted Commission policy states, then the Commission would have the opportunity to examine whether the expansion of certain individual receipt point capacities will be a cost-effective means for ratepayers to acquire additional priority scheduling rights at new or expanded receipt points.

On a displacement basis, the first 400 MMcf/d of the Otay Mesa expansion is estimated to cost about $10 million while the next additional 300 MMcf/d of Otay Mesa displacement expansion will incrementally cost about $235 million.[60] On the other hand, SoCalGas estimates that on an "expansion" expansion basis, the first 400 MMcf/d of Otay Mesa expansion would cost about $421 million while the next additional 300 MMcf/d of Otay Mesa "expansion" expansion would entail a further additional cost of about $257 million. DRA estimates that the displacement expansion translates to a per unit cost of 2.5 cents per cf/d for the first 400 MMcf/d of expansion while the next increment of 300 MMcf/d of displacement expansion on a per unit of capacity basis would cost 78 cents per cf/d. The latter is about 31 times higher than the former. According to the FAR proposal, customers in the Southern zone with firm access at Otay Mesa would have the right on an alternative firm basis to bring in supplies at the Ehrenberg and Blythe receipt points. If priority scheduling rights at Otay Mesa can be obtained at more cost-effective rates, then SoCalGas'/SDG&E's customers rather than

[60] Ex. 50, p.28:25 DRA/Sabino, citing Table 3 shown on page 9 in SoCalGas's Prepared Direct Testimony in R.04-01-025 dated December 1, 2005.

developers can benefit from ensuring firm access to more competitive gas supplies (i.e., San Juan, Permian, or LNG supplies).

The Commission asserted that it would consider rolled-in on a case-by-case basis. For the first 400 MMcf/d of capacity at Otay Mesa that may be available through displacement, DRA recommends the $10 million should be invested to secure the 400 MMcf/d of displacement capacity as a system benefit and allocated to ratepayers. This capacity can then be used as an alternative by customers to capacity at Blythe on the Southern system. All additional expansions should be filed by application as set forth by the Commission in D. 04-09-022. DRA previously agreed in SDG&E's last cost of service proceeding that ratepayers should pay for the initial $4 million to develop the interconnect at Otay Mesa.

DRA supports granting priority scheduling rights to LNG suppliers, shippers, developers and other interested parties who are willing to finance and who actually advance the funds on an incremental cost basis to undertake an "expansion" expansion of the system. Such priority scheduling rights should have appropriate access rights based on financing actual expansion capacity. Coral's witness Mr. Travis noted that if costs were rolled in at Otay Mesa, Coral would not request a scheduling priority.[61]

In the case of a shipper, supplier, developer, or other interested parties willing to finance a "displacement" expansion of the system (i.e., displacement does not add to the overall downstream capacity of the SoCalGas/SDG&E system currently at 3,875 MMcf/d), such an investment would not necessarily grant a shipper firm downstream rights on the system, in the event of transmission zone constraints. The purchase of displacement capacity would serve to provide firm access at the receipt point. In the event of transmission zone constraints, such rights would be subject to appropriate reduction and would not be granted incremental firm access rights.

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[61] 12 RT 1898:14-21, Coral/Travis.

F. The Commission should reevaluate the peaking rate in the next BCAP.

SoCalGas proposes that its peaking service tariff be retained in order to send proper price signal to potential bypass customers and allow SoCalGas to recover the cost of standing by to provide intermittent peaking service.[62] The all volumetric transportation charges of SoCalGas, in contrast with the straight or modified fixed variable rate designs of interstate pipelines that include significant demand charges, creates the possibility that SoCalGas customers might elect to receive base load service from an interstate pipeline and utilize SoCalGas for peaking service only. The result would be that such customers would not contribute their share of the actual cost to serve them.

To combat this problem, the Commission established the peaking rate in its current form in D.01-08-020, finding that the "tariff will apply to all customers who use SoCalGas' transmission and distribution system for peaking service."[63] The purpose of the peaking rate is to encourage economic bypass and discourage uneconomic bypass of the SoCalGas transmission and distribution system, consistent with the Commission policy of promoting economic bypass.[64]

None of the approximately 48 generating units of about 4,200 MW of new generation since 2001 in the SoCalGas territory purchase gas from a supplier other than SoCalGas.[65] According to SoCalGas, there have been two customers served under the peaking tariff service (one in 2000 and another in 2002) but there were no volumes of gas

[62] Ex. 56, p. 7:21-23, SoCalGas/SDG&E/Horn; 15 RT 2384:23-26, SoCalGas/SDG&E/Gilmore.

[63] D.01-08-020, p.1.

[64] See D.01-08-020, *mimeo*, Conclusion of Law 1. Economic bypass occurs if a customer can be served less by a competing company, while noneconomic bypass occurs it costs the same or more for another company to serve that customer. Ex. 56, SoCalGas/SDG&E/Horn. To the extent the alternate service depends on service from SoCalGas that is subsidized by captive core customers, then the bypass is uneconomic and the peaking rate should apply to protect SoCalGas customers. Ex. 56, p. 7:21-23, SoCalGas/SDG&E/Horn.

[65] Ex. 50, p.32, DRA/Sabino, citing SoCalGas Response to Kern Questar DR#2, Question 6.

transported under the peaking service tariff on an annual basis from 2000 to the present on the SoCalGas or the SDG&E system.[66] Low use of the peaking tariff may mean that it is operating as intended to discourage uneconomic bypass or alternatively that the peaking tariff is no longer necessary.

DRA has not examined the cost basis of the peaking rate in this proceeding, but DRA recommended a slightly less onerous rate in contrast to the rate ultimately adopted by the Commission. DRA recommends that the Commission retain the peaking rate for the present time, but reevaluate the amount in the next BCAP.

G. Off system deliveries

DRA does not oppose the establishment of off-system delivery services to PG&E as proposed by SoCalGas/SDG&E. As DRA stated in comments in R.04-01-025 and in its PHC Statement in this procceding, SoCalGas should be permitted to file an advice letter in order to establish interruptible rates for off-system transportation service into the PG&E system at cost based rates. DRA recommends that issues regarding firm rates be addressed in a separate application or future BCAP as demand for such a service materializes.

SoCalGas/SDG&E claim that the firm off-system delivery service to customers of PG&E may require new facilities, while the interruptible service uses existing facilities or unused firm off-system delivery service contracted rights for displacement of forward-haul deliveries.[67] SoCalGas/SDG&E provided no information on transmission system improvement and associated costs that are necessary to implement firm path and reliable displacement off-system services. SoCalGas/SDG&E stated that such information would be provided during the open seasons and at that time, the markets will decide which delivery point to support. Given the significant volumes of gas moving into the SoCalGas/SDG&E system, DRA remains unconvinced that new facilities would be

[66] See SoCalGas Response to Indicated Producers DR#1, Question 10.

[67] Ex. 15, p. 20, SoCalGas/SDG&E/Schwecke.

required under all circumstances to provide firm off-system service. The Commission should direct SoCalGas/SDG&E to provide further regarding new facilities required for off-system deliveries.

IV. CONCLUSION

FAR is not just a "solution in search of a problem,"[68] it is a "solution" that creates problems. DRA respectfully requests that the Commission deny SoCalGas and SDG&E's request to implement FAR. Such a result would not be two weeks "wasted" in the hearing room,[69] but would instead prevent implementation of an unnecessary and untested system that would harm the interests of both sellers and ratepayers. If the Commission believes a system of firm access rights is necessary as a matter of policy, it should implement the DRA alternate Firm Access Rights proposal, or should consider a truly unbundled system of firm access rights.

Respectfully submitted,

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September 14, 2006

[68] Ex.92, p. 3:27, SCGC/Yap.

[69] RT 1554.

CERTIFICE OF SERVICE

I hereby certify that I have this day served a copy of **OPENING BRIEF OF THE DIVISION OF RATEPAYER ADVOCATE ON PHASE 2 ISSUES in A.04-12-004** by using the following service:

[X] **E-Mail Service:** sending the entire document as an attachment to an e-mail message to all known parties of record to this proceeding who provided electronic mail addresses.

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Executed on September 14, 2006 at San Francisco, California.

/s/ PERRINE D. SALARIOSA
Perrine Salariosa

N O T I C E

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